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1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA

3 DAVID SILVERMAN, on behalf of
4 himself and others similarly
5 situated,

6 Plaintiffs,

7 SmithKline Beecham
8 Corporation, dba
9 GlaxoSmithKline; and DOES 1 to
10 10, Inclusive,

11 Defendants.

CASE NO.: CV06-07272 DSF (CTx)
Complaint Filed: 11/14/06 2006

**SECOND AMENDED COMPLAINT
CALIFORNIA CLASS ACTION**

SECOND AMENDED COMPLAINT FOR:

1. Unfair Competition Law, B&P
Code § 17200
2. Overtime Provisions
3. Waiting Period Penalties
[Cal. Labor Code §§ 201-203
4. Record Keeping Provisions
5. Meal & Rest Period Provisions
6. Civil Penalties
7. Conversion

DEMAND FOR JURY TRIAL

14 MARY STEHLE, on behalf of
15 herself and all others
16 similarly situated,

17 Plaintiffs,

18 SmithKline Beecham
19 Corporation, dba
20 GlaxoSmithKline; and DOES 1 to
21 10, Inclusive,

22 Defendants.

CASE NO.: CV07-2601-DSF (CTx)
Complaint Filed: 12/14/06

23 Consolidated into CASE NO. CV
24 06-07272 DSF (CTx) for
purposes of discovery and law
and motion.

Court: Roybal, Courtroom 840
Judge: Dale S. Fischer

25 Upon information and belief, comes now plaintiffs, DAVID
26 SILVERMAN, and MARY STEHLE, on behalf of themselves and others
27 similarly situated, ("Plaintiffs"), and on the basis of that
28

1 information and belief hereby allege as follows:

2 **INTRODUCTION AND CERTAIN DEFINITIONS**

3 1. This is an action for violation of state wage and hour
4 laws by and on behalf of former and current employees of
5 Defendants, referred to below as "Covered Employees." The Covered
6 Employees include DAVID SILVERMAN, Plaintiff. Pursuant to a
7 decision, policy and plan, these employees are unlawfully
8 classified by Defendants as exempt from laws requiring overtime
9 pay, but actually were and are non-exempt and entitled to overtime
10 pay.

11 2. In this pleading, the term "Covered Employees" means all
12 persons who have been, are, or in the future will be employed by
13 any of the Defendants in any job whose title is or was referred to
14 by any of the following titles, and employees who performed
15 substantially the same work as employees with those titles
16 (discovery may reveal additional titles and employees that should
17 be included):

- 18 a. Executive Sales Representative
19 b. Senior Sales Representative
20 c. Sales Representative

21 and who were employed during the statute of limitations period for
22 the particular claim for relief in which the term Covered
23 Employees is used, including time during which the statute of
24 limitation was or may have been tolled or suspended. The above
25 job positions are referred to herein as "Covered Positions."

26 3. In this pleading, "Defendants" means "defendants and
27 each of them" and refers to the defendants named in the particular
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1 claim for relief in which the word "Defendants" appears.
2 Defendants include SMITHKLINEBEECHAM CORPORATION dba
3 GLAXOSMITHKLINE, PLC ("GLAXOSMITHKLINE"), and all domestic
4 affiliates and subsidiaries.

5 4. The allegations in this pleading are made without any
6 admission that, as to any particular allegation, Plaintiff bear
7 the burden of pleading, proof, or persuasions. Plaintiff reserves
8 all rights to plead in the alternative.

9 **JURISDICTION AND VENUE**

10 5. This Court has diversity jurisdiction under 28 U.S.C. §
11 1332(d) (the Class Action Fairness Act, hereinafter "CAFA")
12 because: i) the claims of all plaintiffs aggregated together
13 exceed \$5 million; and ii) at least one plaintiff is diverse from
14 at least one defendant. Plaintiffs estimates that the aggregated
15 claims of all plaintiffs exceed \$5 million. Furthermore, as
16 stated more fully below, Plaintiff SILVERMAN is a citizen of
17 California, which is diverse from Defendant GLAXOSMITHKLINE, a
18 foreign corporation with a principal place of business in
19 Pennsylvania.

20 6. Venue is proper in this District because a substantial
21 part of the events and omissions giving rise to the claims
22 occurred in this District. Venue is proper in this District also
23 because there is personal jurisdiction in this District over all
24 Defendants. Presently and at all times, Defendants have conducted
25 substantial, continuous and systematic commercial activities in
26 this District.

PARTIES

7. Defendant GLAXOSMITHKLINE is a foreign corporation with its United States headquarters in Philadelphia, Pennsylvania. Together with the other Defendants, GLAXOSMITHKLINE does business in all fifty states, including California and the United States Territories.

8. Plaintiff DAVID SILVERMAN is a California resident and was employed by Defendants in Tarzana, California from April 2000 to July 2005 as a Sales Representative/Senior Sales Representative. Plaintiff SILVERMAN worked hours in excess of forty (40) hours per workweek and eight (8) hours per day, without receiving overtime compensation as required by state law.

9. Plaintiff MARY STEHLE is an individual residing in the County of Orange, State of California. Plaintiff STEHLE was employed by GLAXOSMITHKLINE at all times relevant herein. As a Pharmaceutical Representative, Plaintiff STEHLE regularly worked hours in excess of forty (40) hours per workweek, and was subject to GLAXOSMITHKLINE's unlawful policies during the relevant time period.

10. DOES 1 through 10, inclusive are now, and/or at all times mentioned in this Second Amended Complaint were, licensed to do business and/or actually doing business in the state of California.

11. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiffs, who therefore sues Defendants by such fictitious names.

1 Plaintiffs are informed and believe, and based thereon allege,
2 that each of the Defendants designated herein as a DOE is legally
3 responsible in some manner for the unlawful acts referred to
4 herein. Plaintiffs will seek leave of court to amend this Second
5 Amended Complaint to reflect the true names and capacities of the
6 Defendants designated hereinafter as DOES when such identities
7 become known.

8 12. Plaintiffs are informed and believe and thereon allege
9 at all relevant times each Defendant, directly or indirectly, or
10 through agents or other persons, employed Plaintiffs and/or other
11 Covered Employees, and exercised control over the wages, hours and
12 working conditions of Plaintiffs and Covered Employees. Plaintiffs
13 are informed and believe and thereon allege, that, at all relevant
14 times, each defendant was the principal, agent, partner, joint
15 venturer, officer, director, controlling shareholder, subsidiary,
16 affiliate, parent corporation, successor in interest and/or
17 predecessor in interest of some or all of the other Defendants,
18 and was engaged with some or all of the other Defendants in a
19 joint enterprise for profit, and bore such other relationships to
20 some or all of the other Defendants so as to be liable for their
21 conduct with respect to the matters alleged below. Plaintiffs are
22 informed and believe and thereon allege that each defendant acted
23 pursuant to and within the scope of the relationships alleged
24 above, that each defendant knew or should have know about, and
25 authorized, ratified, adopted, approved, controlled, aided and
26 abetted the conduct of all other Defendants.

FACTS

13. Upon information and belief, Defendants employ approximately 1500-2000 Covered Employees in California.

14. Plaintiffs and Covered Employees were paid a salary plus a bonus for work performed.

15. Specifically, upon information and belief, Defendants' managers, with the knowledge and consent of corporate management, systemically violated the law throughout California in the following respects:

- a) Failing to pay employees overtime compensation for hours worked in excess of forty (40) hours per week;
- b) Failing to maintain accurate records of employees' time;
- c) Failing to pay the Covered Employees overtime compensation for hours worked in excess of eight (8) hours per day;

16. As set forth above, Plaintiffs were employed by Defendants. During this time, Plaintiffs on a regular basis worked over forty (40) hours per week.

17. In addition, Plaintiffs on a regular basis worked in excess of eight (8) hours per day.

18. Plaintiffs sustained substantial losses from Defendants' failure to pay them overtime compensation.

19. Upon information and belief, other employees who worked for Defendants throughout California are members of the Class alleged hereinbelow and were subjected to the same policies and

1 practices and have sustained similar losses of compensation for
2 numerous hours worked on behalf of Defendants.

3 20. Defendants, through their corporate management,
4 deliberately trained, supervised, instructed, and authorized
5 managerial employees to engage in the above unlawful practices and
6 have ratified their actions thereafter, in order to enhance
7 corporate profits and reduce their labor costs.

8 21. At times during the liability period, Plaintiffs and
9 members of the Class worked shifts greater than five (5) hours and
10 were not provided nor allowed to take a thirty (30) minute,
11 uninterrupted meal break for such shifts or work periods.

12 22. At times during the liability period, Plaintiffs and
13 members of the Class were required to work periods lasting over
14 four (4) hours and were not provided or allowed to take a ten
15 minute uninterrupted rest break during each such work period.

16 **RULE 23 CLASS ALLEGATIONS**

17 23. Plaintiffs brings the First, Second, Third, Fourth,
18 Fifth, Sixth, and Seventh Claims for Relief, pursuant to the
19 Federal Rules of Civil Procedure ("FRCP") Rule 23, on behalf of
20 all persons who were, are, or will be employed by Defendants on or
21 after the date that is four (4) years before the filing of the
22 Complaint in this case (the "Class Period").

23 24. The proposed class that the Plaintiff seeks to represent
24 is defined as all persons who within four (4) years of the filing
25 of the Complaint have been, are, or in the future will be employed
26 in California by Defendants in any of the "Covered Positions."
27 All said persons, including Plaintiffs, are referred to herein as
28

1 the "Class."

2 25. The subclasses Plaintiffs will seek to certify are
3 currently composed of and defined as follows:

4 a. All persons employed in California by Defendants in
5 any of the Covered Positions who worked in excess of eight
6 (8) hours per day and/or forty (40) hours per week during the
7 applicable statutory period who were not paid overtime wages
8 ("California Overtime Subclass "A");

9 b. All persons employed in California by Defendants in
10 any of the Covered Positions who worked in excess of forty
11 (40) hours per week during the applicable statutory period
12 who were not paid overtime wages ("California Overtime
13 Subclass "B");

14 c. All persons employed in California by Defendants in
15 any of the Covered Positions who Defendants mis-classified as
16 exempt from overtime requirements during the applicable
17 statutory period ("California Overtime Subclass "C");

18 d. All persons employed in California by Defendants in
19 any of the Covered Positions who did not receive all meal
20 periods or commensurate pay during the applicable statutory
21 period ("California Meal Period Subclass");

22 e. All persons employed in California by Defendants in
23 any of the Covered Positions who did not receive all rest
24 periods or commensurate pay during the applicable statutory
25 period ("California Rest Period Subclass");

26 f. All persons employed in California by Defendants in
27 any of the Covered Positions who were not provided accurate
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1 itemized statement of wages earned, hours worked, deductions,
2 net wages and applicable hourly rates during the applicable
3 statutory period ("California Illegal Records Subclass");

4 g. All persons employed in California by Defendants in
5 any of the Covered Positions who were not reimbursed for
6 business expenses during the applicable statutory period
7 ("California Business Expense Subclass");

8 26. The Overtime Subclass A, Overtime Subclass B, Overtime
9 Subclass C, Meal Period Subclass, Rest Period Subclass, Business
10 Expense Subclass and Illegal Records Subclass are hereinafter
11 collectively referred to the "Subclasses".

12 27. Throughout discovery in this litigation, Plaintiffs may
13 find it appropriate and/or necessary to amend the definition of
14 the Class or Subclasses. In any event, Plaintiffs will formally
15 define and designate a class definition at such time when
16 Plaintiffs seek to certify the Class and the Subclasses alleged
17 herein.

18 28. The Class members and members of each of the Subclasses
19 are readily ascertainable. The number and identity of the Class
20 members and members of the Subclasses are determinable from the
21 records of Defendants. The hours assigned and worked, the
22 positions held, and the rates of pay for each Class member are
23 also determinable from Defendants' records. For purposes of
24 notice and other purposes related to this action, their names and
25 addresses are readily available from Defendants. Notice can be
26 provided by means permissible under said FRCP 23.

27 29. The proposed Class is so numerous that joinder of all
28

1 members is impracticable, and the disposition of their claims as a
2 class will benefit the parties and the court. Although the
3 precise number of such persons is unknown, and the facts on which
4 the calculation of that number are presently within the sole
5 control of Defendants, upon information and belief, there are more
6 than 1500 members of the Class.

7 30. Plaintiffs' claims are typical of those claims which
8 could be alleged by any member of the Class, and the relief sought
9 is typical of the relief which would be sought by each member of
10 the Class in separate actions. All the Class members were subject
11 to the same corporate practices of Defendants, as alleged herein,
12 of failing to pay overtime compensation and failing to maintain
13 accurate records. Defendants' corporate-wide policies and
14 practices affected all Class members similarly, and Defendants
15 benefited from the same type of unfair and/or wrongful acts as to
16 each Class member. Plaintiff and other Class members sustained
17 similar losses, injuries and damages arising from the same
18 unlawful policies, practices and procedures.

19 31. Plaintiffs are able to fairly and adequately protect the
20 interests of the Class and has no interests antagonistic to the
21 Class. Plaintiffs are represented by attorneys who are
22 experienced and competent in both class action litigation and
23 employment litigation and have previously represented plaintiff in
24 wage and hour cases.

25 32. A class action is superior to other available methods
26 for the fair and efficient adjudication of the controversy -
27 particularly in the context of wage and hour litigation where
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1 individual class members lack the financial resources to
2 vigorously prosecute a lawsuit against corporate defendants.
3 Class action treatment will permit a large number of similarly
4 situated persons to prosecute their common claims in a single
5 forum simultaneously, efficiently, and without the unnecessary
6 duplication of efforts and expense that numerous individual
7 actions engender. Because the losses, injuries and damages
8 suffered by each of the individual Class members are small in the
9 sense pertinent to a class action analysis, the expenses and
10 burden of individual litigation would make it extremely difficult
11 or impossible for the individual Class members to redress the
12 wrongs done to them. On the other hand, important public interests
13 will be served by addressing the matter as a class action. The
14 adjudication of individual litigation claims would result in a
15 great expenditure of court and public resources; however, treating
16 the claims as a class action would result in a significant savings
17 of these costs. The prosecution of separate actions by individual
18 members of the Class would create a risk of inconsistent and/or
19 varying adjudications with respect to the individual members of
20 the Class, establishing incompatible standards of conduct for
21 Defendants and resulting in the impairment of class members'
22 rights and the disposition of their interests through actions to
23 which they were not parties. The issues in this action can be
24 decided by means of common, class-wide proof. In addition, if
25 appropriate, the court can, and is empowered to, fashion methods
26 to efficiently manage this action as a class action.

27 33. Upon information and belief, Defendants and other
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1 employers throughout the state violate the California Labor Law.
2 Current employees are often afraid to assert their rights out of
3 fear of direct or indirect retaliation. Former employees are
4 fearful of bringing claims because doing so can harm their
5 employment, future employment, and future efforts to secure
6 employment. Class actions provide class members who are not named
7 in the complaint a degree of anonymity, which allows for the
8 vindication of their rights while eliminating or reducing these
9 risks.

10 34. There are questions of law and fact common to the Class
11 which predominate over any questions affecting only individual
12 Class members, including:

- 13 a) Whether the Class members qualify for exempt status
14 under the inside or outside salesperson exemption;
- 15 b) Whether the Class members qualify for exempt status
16 under the administrative exemption;
- 17 c) Whether the Class members are primarily engaged in
18 "sales" of Defendants' pharmaceutical products;
- 19 d) The extent to which Defendants analyzed the duties
20 and responsibilities of the Class members before
21 classifying them as exempt;
- 22 e) Defendants' expectations as to the duties and
23 responsibilities of the Class members, and whether
24 these expectations are reasonable under the
25 circumstances;
- 26 f) Whether the various tasks performed by the Class
27 members qualify as exempt or non-exempt tasks;
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- 1 g) Whether Defendants' conduct constitutes unfair
- 2 competition within the meaning of Business and
- 3 Professions Code sections 17200 and 17203;
- 4 h) Whether Class members are entitled to compensatory
- 5 damages, and if so, the means of measuring such
- 6 damages;
- 7 i) Whether Class members are entitled to injunctive
- 8 relief;
- 9 j) Whether Class members are entitled to restitution;
- 10 k) Whether Defendants are liable for pre-judgment
- 11 interest;
- 12 l) Whether Defendants are liable for attorneys' fees
- 13 and costs;
- 14 m) Whether Defendants employed or jointly employed the
- 15 Plaintiff and the Class within the meaning of the
- 16 California law;
- 17 n) What proof of hours is sufficient where Defendants
- 18 failed in their duty to maintain time records;
- 19 o) What were the policies, practices, programs,
- 20 procedures, protocols and plans of Defendants
- 21 regarding payment of overtime wages;
- 22 p) What were the policies, practices, programs,
- 23 procedures, protocols and plans of Defendants
- 24 regarding payment of wages for all hours worked;
- 25 q) Whether Defendants failed and/or refused to pay the
- 26 Plaintiff and the Class premium pay for hours
- 27 worked in excess of forty (40) per workweek or
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- 1 eight (8) hours per workday within the meaning of
2 California law;
- 3 r) Whether Defendants' withholding of overtime pay was
4 willful under the meaning of Labor Code section
5 203;
- 6 s) What are and were the policies, practices,
7 programs, procedures, protocols and plans of
8 Defendants regarding the types of work and labor
9 for which Defendants did not pay the Class members
10 at all;
- 11 t) At what common rate, or rates subject to common
12 methods of calculation, was and is Defendants
13 required to pay the Class members for their work;
- 14 u) What are the common conditions of employment and in
15 the workplace, such as record keeping, breaks, and
16 policies and practices regarding labor budgeting,
17 that affect whether the Class was paid at overtime
18 rates for overtime work;
- 19 v) Whether Defendants compensated class members that
20 terminated their employment all wages owed them
21 immediately upon the termination of their
22 employment as required by California law; and
- 23 w) Whether Defendants provided Plaintiff and the Class
24 members with rest periods and meal breaks as
25 required by California law.
- 26
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FIRST CLAIM FOR RELIEF

(Unfair Competition Law,

Business & Professions Code § 17200 et seq.

Brought by Plaintiff on Behalf of

Himself and the Class)

35. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all previous paragraphs as if they were set forth again herein.

36. The foregoing conduct, as alleged, violates the California Unfair Competition Law ("UCL"), B&P Code § 17200 et seq. Section 17200 of the B&P Code prohibits unfair competition by prohibiting, inter alia, any unlawful or unfair business acts or practices.

37. Defendant committed acts of unfair competition, as defined by the UCL, by, among other things, engaging in the acts and practices described herein. Defendants' conduct as herein alleged has damaged Plaintiffs and the Class by wrongfully denying their earned wages, and therefore was substantially injurious to Plaintiffs and the Class.

38. Defendants' course of conduct, acts, and practices in violation of California laws constitute a separate and independent violation of the UCL. Defendants' conduct described herein violates the policy or spirit of such laws or otherwise significantly threatens or harms competition.

39. The harm to Plaintiffs and the Class in being wrongfully denied lawfully earned wages outweighs the utility, if any, of Defendants' policies or practices and, therefore, Defendants'

1 actions described herein constitute an unfair business practice or
2 act within the meaning of the UCL.

3 40. The unlawful and unfair business practices and acts of
4 Defendant, as described above, has injured Plaintiffs and the
5 Class in that they were wrongfully denied the payment of earned
6 compensation, both at their regular rate and overtime wages.

7 41. Plaintiffs and the Class seek recovery of attorneys'
8 fees and costs of this action to be paid by Defendant, as provided
9 by the UCL and applicable law.

10 42. Plaintiffs and the Class seek restitution in the amount
11 of the respective unpaid overtime for all hours of work in excess
12 of forty (40) hours per week and/or eight (8) hours per day,
13 uncompensated meal/rest break pay, attorneys' fees, and cost of
14 suit and such other legal and equitable relief from Defendants'
15 unlawful and willful conduct as the Court deems just and proper.

16 **SECOND CLAIM FOR RELIEF**

17 **(Overtime Provisions Wage Order No. 4;**

18 **Labor Code §§ 510, 1194, and 1194.5**

19 **Brought by Plaintiff on Behalf of**

20 **Himself and the Class)**

21 43. Plaintiffs, on behalf of themselves and the Class,
22 reallege and incorporate by reference all previous paragraphs as
23 if they were set forth again herein.

24 44. It is unlawful under California law for an employer to
25 suffer or permit an employee to work without paying wages for all
26 hours worked, including overtime wages for work in excess of eight
27 (8) hour workdays and/or forty (40) hour workweeks.

1 45. Plaintiffs and the Class were not properly compensated
2 for hours that they worked in excess of eight (8) hours per
3 weekday and/or forty (40) hours per week.

4 46. As a direct and proximate result of Defendants' unlawful
5 conduct, as set forth herein, Plaintiffs and the Class have
6 sustained damages, including loss of earnings, in an amount to be
7 established at trial.

8 47. Plaintiffs and the Class seek damages in the amount of
9 the respective unpaid overtime compensation, plus penalties, as
10 provided by state law, prejudgment interest, and costs and
11 attorneys' fees, pursuant to statute, and such other legal and
12 equitable relief as the Court deems just and proper.

13 **THIRD CLAIM FOR RELIEF**

14 **(Waiting Period Penalties,**

15 **Labor Code §§ 201-203**

16 **Brought by Plaintiff on Behalf of**

17 **Himself and the Class)**

18 48. Plaintiffs, on behalf of themselves and the Class,
19 reallege and incorporate by reference all previous paragraphs as
20 if they were set forth again herein.

21 49. A California employer must compensate an employee that
22 terminates his employment not later than 72 hours thereafter.

23 50. Defendant failed to pay Plaintiffs and members of the
24 Class whose employment terminated the overtime compensation they
25 were owed within 72 hours of the termination of their employment.

26 51. As a direct and proximate result of Defendants' unlawful
27 conduct, as set forth herein, Plaintiffs and the Class have
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1 sustained damages, including loss of earnings, in an amount to be
2 established at trial.

3 52. Plaintiffs and the Class are entitled to seek penalties
4 under Labor Code § 203 equal to their regular rate of pay for a
5 period of thirty (30) days.

6 **FOURTH CLAIM FOR RELIEF**

7 **(Record-Keeping Provisions, Wage Order No. 4;**

8 **Labor Code §§ 226, 1174, & 1174.5**

9 **Brought by Plaintiff on Behalf of**

10 **Himself and the Class)**

11 53. Plaintiffs, on behalf of themselves and the Class,
12 reallege and incorporate by reference all previous paragraphs as
13 if they were set forth again herein.

14 54. By failing to record, report, and/or compensate
15 Plaintiffs and the Class for compensable time performed before and
16 after their regularly scheduled shifts, Defendants have failed
17 knowingly and intentionally to make, keep, maintain, and preserve
18 records with respect to each of its employees sufficient to
19 determine their wages, hours, and other conditions and practice of
20 employment in violation of Labor Code §§ 226(a), 1174(d) and the
21 IWC Wage Order.

22 55. Plaintiffs and the Class are entitled to and seek
23 injunctive relief requiring Defendants to comply with Labor Code
24 §§ 226(a) and 1174(d), and further seek penalties under Labor Code
25 §§ 226(e) and 1174.5, including the greater of all actual damages
26 or one hundred dollars (\$100) for the initial pay period in which
27 a violation occurs and two hundred dollars (\$200) per employee for
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1 each violation in a subsequent pay period.

2 **FIFTH CLAIM FOR RELIEF**

3 **(Meal and Rest Period Provisions,**

4 **Labor Code §§ 226.7 & 512, and CA Wage Order No. 4**

5 **Brought by Plaintiff on Behalf of**

6 **Himself and the Class)**

7 56. Plaintiffs, on behalf of themselves and the Class,
8 reallege and incorporate by reference all previous paragraphs as
9 if they were set forth again herein.

10 57. Defendant failed to provide Plaintiffs and the Class
11 with a half-hour meal break for every work period of more than
12 five (5) hours per day and ten minute rest period for every four
13 (4) hours worked, in violation of Labor Code § 512 and the IWC
14 Wage Order.

15 58. Plaintiff and the Class are entitled to seek wages under
16 Labor Code § 226.7, including one additional hour of pay at the
17 Plaintiffs' and the Class' regular rate of compensation for each
18 workday that the meal or rest period is not provided.

19 **SIXTH CLAIM FOR RELIEF**

20 **(Civil Penalties, Labor Code § 2699)**

21 59. Plaintiffs, on behalf of themselves and the Class,
22 reallege and incorporate by reference all previous paragraphs as
23 if they were set forth again herein.

24 60. California Civil Code § 2699 provides for the imposition
25 of civil penalties for violations of the California Labor Code
26 where there is no statute which specifically provides for the
27 imposition of civil penalties in specified amounts to punish the
28

1 alleged statutory violation.

2 61. By and through the conduct described above, including
3 failing to (a) pay Plaintiffs overtime compensation, (b) provide
4 Plaintiffs with required meal and rest periods, (c) pay employees
5 whose employment has terminated in the proper and manner, and (d)
6 keep proper records of employees' time worked and wages paid,
7 Defendants have violated numerous provisions of the California
8 Labor Code, as detailed above.

9 62. Pursuant to California Labor Code § 2699, Defendant is
10 liable for civil penalties of \$100 per aggrieved employee per pay
11 period for each initial statutory violation described above, and
12 \$200 per aggrieved employee per pay period for each subsequent
13 violation payable to the California General Fund, the Labor and
14 Workforce Development Agency, Plaintiffs, and members of the Class
15 for each pay period until the date of trial.

16 63. Plaintiff has satisfied all of the prerequisites
17 required for maintaining a civil suit to recover such penalties
18 provided for in Labor Code § 2699.3. Plaintiff SILVERMAN, by and
19 through his counsel, provided written notice by certified mail to
20 the California Labor and Workforce Development Agency and
21 Defendant of the specific provisions of this code alleged to have
22 been violated, including the facts and theories to support the
23 alleged violation. Thereafter, 33 days have passed since such
24 notice was provided, and the California Labor and Workforce
25 Development Agency have notified Plaintiff's counsel that it
26 intends not to investigate the alleged violation.
27
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SEVENTH CLAIM FOR RELIEF**(Conversion)**

64. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all previous paragraphs as if they were set forth again herein.

65. At all relevant times herein, Defendants had a legal obligation imposed by statutory law to compensate Plaintiffs and the Class members for all of the hours worked, overtime, and minimum wages. Plaintiffs have hereinbefore alleged that they and the Class were not compensated for all hours worked, overtime, minimum wages, and that such payments are due.

66. Defendants knowingly and intentionally failed and refused to pay for all hours worked, overtime, and minimum wages. Defendants withheld these sums and converted them by refusing to pay Plaintiff and the Class members as alleged herein. Plaintiffs and the Class owned or had the right to own and had the legal right to hold, possess and dispose of, the withheld wages, and Plaintiffs and the Class rely on this statutory right. Plaintiffs and the Class gained the right to hold, possess, and dispose of the compensation as Plaintiffs and the Class earned these wages during the relevant time period.

67. The exact amount of the unpaid wages and pay owed to Plaintiffs' and the Class' rights to be compensated, and to own, possess an/or control disposition of said sums. Plaintiffs are informed and believe and thereon allege that they and each of the members of the Class were not paid overtime and minimum wages. Plaintiffs and the members of the Class and Subclasses are

1 entitled to overtime and minimum wages.

2 68. The exact amount of the unpaid wages and pay owed to
3 Plaintiffs and the members of the Class, and each of them, is
4 capable of being made certain. The specific identifiable sum of
5 money, to which Plaintiffs and the members of the Class are
6 entitled, varies per Class member and will be established at trial
7 in an amount according to proof.

8 69. In failing to pay overtime and minimum wages, Defendants
9 knowingly, unlawfully, and intentionally took, appropriated, and
10 converted the property (wages) of Plaintiffs and the Class and the
11 Subclasses for Defendants' own use, purposes, and benefits. At
12 the time the conversion took place, Plaintiffs and the Class and
13 the Subclasses were entitled to immediate possession of the
14 amounts of wages as they were entitled to such compensation under
15 Labor Code section 1194, Business and Professions Code sections
16 17200, et seq., and I.W.C. Wage Order 4. Said conversion was
17 oppressive, malicious and fraudulent, and Defendants' obligation
18 to compensate was concealed by Defendants from the named
19 Plaintiffs and from the Class and from the Subclasses, as
20 hereinafter alleged. Further, Defendants knew that Plaintiff and
21 the members of the Class were, in fact, entitled to full payment
22 of earned wages and pay, and knowingly refused payment to
23 Plaintiff and members of the Class, and instead utilized the money
24 they would otherwise have had to pay to Plaintiffs and the members
25 of the Class for Defendants' own purposes and benefits.

26 70. Defendants have regularly and consistently maintained
27 corporate policies and procedures that dictated and mandated that
28

1 Class members were not to be paid for overtime and minimum wages.
2 Plaintiff is informed and believes and thereon alleges that
3 Defendants implemented and carried out the policies and procedures
4 as alleged herein for the primary purpose of depriving Plaintiffs
5 and members of the Class of their right to these wages under the
6 Labor Code section 1194, Business and Professions Code sections
7 17200, et seq., and I.W.C. Wage Order 4, such that Defendants
8 converted said sums for their own uses, as heretofore alleged.

9 71. Plaintiffs are informed and believe and thereon allege
10 that Class members carry out their tasks, duties, and
11 responsibilities for Defendants in substantially similar fashion
12 as heretofore alleged. Accordingly, Defendants have taken sums
13 owed to Plaintiffs and members of the Class and converted the same
14 to their own use and benefit.

15 72. Plaintiffs and members of the Class have been injured by
16 said conversion through reliance on Defendants' obligation to
17 comply with applicable California law, requiring that Defendants
18 pay overtime and minimum wages to Plaintiff and the Class.
19 Plaintiffs and members of the Class are entitled to all money
20 converted by the Defendants with interest thereon, as well as any
21 and all profits, whether direct or indirect which the Defendants
22 acquired by their unlawful conversion. Furthermore, Defendants'
23 actions constituting conversion were oppressive, malicious, and
24 fraudulent and were concealed by Defendants from the named
25 Plaintiffs and the Class as hereinbefore alleged. Plaintiff and
26 the Class have been injured by Defendants' oppressive, malicious,
27 intentional, and fraudulent actions, entitling Plaintiffs and the
28

1 Class to punitive and exemplary damages.

2 **PRAYER FOR RELIEF**

3 **WHEREFORE**, Plaintiff, on behalf of himself and all other
4 Covered Employees, pray for relief as follows:

5 A. Certification of this action as a class action brought
6 pursuant to FRCP Rule 23;

7 B. Designation of Plaintiff SILVERMAN and Plaintiff STEHLE
8 as representatives of the Class;

9 C. An injunction against Defendants, their officers,
10 agents, successors, employees, representatives, and any and all
11 persons acting in concert with it, as provided by law, from
12 engaging in each of the unlawful practices, policies, and patterns
13 set forth herein;

14 D. An award of damages, and/or restitution according to
15 proof, including liquidated damages, to be paid by Defendants;

16 E. Penalties available under applicable law;

17 F. Costs of action incurred herein, including expert fees;

18 G. Attorneys' fees under applicable statutes;

19 H. Pre-judgment and post-judgment interest, as provided by
20 law; and

21 I. Such other and further legal and equitable relief as
22 this Court deems necessary, just and proper.

23 DATED: July 07, 2008

KINGSLEY & KINGSLEY, APC

24
25 By: /s/ Eric B. Kingsley
ERIC B. KINGSLEY

26 ///

27 ///

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

DATED: July 07, 2008

KINGSLEY & KINGSLEY, APC

By: /s/ Eric B. Kingsley
ERIC B. KINGSLEY